

**REMARKS**

Applicant respectfully requests reconsideration of the present application in view of foregoing amendments and the reasons that follow.

The claims have been amended. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Independent claims 123 and 132 were amended to clarify that a capability to electronically accept the position is served on the respective web pages of the one or more preferred workers and the one or more other workers. For example, the claim elements “*the one or more computers configured for serving the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position in response to one or more respective electronic requests by or for the one or more preferred workers;*” and “*and for serving the one or more web pages of the one or more respective additional workers with an electronic capability to make an electronic acceptance of the position in response to one or more respective electronic requests by or for the one or more additional workers;*” were added to claim 123, and similar language was added to claim 132. Basis for these claim elements may be found at least at page 9, lines 2-3, page 10, lines 13-14, page 12, lines 6-11, page 13, lines 5-10, and page 16, lines 16-19, and Fig. 1, of applicant’s specification. Such an electronic capability might comprise a button or icon on the worker’s web page that may be clicked to accept the position, for example. Note that the claim language “*serving the one or more web pages . . . with an electronic capability*” means that the server hosting the web page serves a web page with this capability. It does not refer to the computer client of the worker as performing the operation. Note that the language “*in response to one or more respective electronic requests*” has been added to clarify that the system and method serve this electronic capability to make an acceptance at least in response to a request coming in from another computer, such as a browser request by or for one or more preferred or additional workers. Note that the serving of the electronic capability to make an acceptance will not occur for the additional workers until after the “specified time period.”

Claims 123, 132 were amended to change the word “selection” to –acceptance–, as the serving of the position on the workers web page is an offer of the position (not merely a listing of positions that the worker can apply for, with a subsequent decision-maker reviewing resumes and making a selection), and the receipt by the system of the electronic acceptance of that position from a worker for which the position was made available, results directly in assigning that position to the worker with no further decision-making. See applicant’s specification at page 16, line 18 – page 17, line 3, and page 18, lines 10-13. Various of the dependent claims have been amended to conform with this word change.

Note also that the electronic acceptance need not necessarily be received from the worker’s web page (although the electronic capability is served on the web page for the worker to accept in this manner). Claims 143 and 144 have been added to clarify that the acceptance may be received via the Internet. Claims 145 and 146 have been added to clarify that the acceptance that caused the assignment is received from the worker’s respective web page. Additionally, claim element of *“the one or more computers configured for automatically making available the new open position to one or more additional respective workers that are qualified, if one of the one or more preferred workers has not accepted the new open position before expiration of the specified time period;”* may be implemented, in a variety of different ways. For example, the position information might not be displayed on the web pages of the respective worker of the additional workers until the specified time period has lapsed. Alternatively, this operation may be performed by displaying the position information on the respective web pages of the respective additional workers in the second tier, but only serving the electronic capability of making the electronic acceptance (e.g., an activated acceptance button) on the respective one or more web pages of the one or more preferred workers to make an electronic acceptance of the position during the specified time period, and then serving the activated acceptance button on the respective additional worker web pages of the additional workers in the second tier after the specified time period has lapsed with no electronic acceptance being received from a preferred worker.

Additionally, independent claims 123 and 132 have been amended to clarify that the “worker code” is a “worker security code.” In this respect, see at least page 5, at lines 5 and 18,

and page 18, line 6 of applicant's specification. Additionally, claims 123 and 132 have been amended to clarify that the serving step serves open positions to a worker web page for which the respective worker is qualified "based at least in part on the qualifications of the worker listed in the one or more databases." See at least applicant's specification at page 5, lines 8 and 16, page 6, lines 1-4, page 9, lines 2-3, and page 10, lines 14-16, page 14, line 17, and page 18, lines 1-8 and 13-15.

Note also that term "qualified" has been removed as a modifier to "worker" to make clear that the assignment of the position may be made in this second tier of qualified workers to the additional workers as well as the preferred workers that continue to have this electronic capability to accept.

As noted, the examiner should be aware that the following patent and co-pending patent applications have the same ultimate assignee, and relate to similar subject matter, and some of these applications have received office actions:

10/880589 fld 7-1-04 (abandoned)  
7,430,519 (Issued 9-30-08)  
11/643769 fld 12-22-06 (not yet examined)  
12/285121 fld 9-29-08 (not yet examined)  
90/008,803 on Patent No. 6,675,151 (Ex Parte Reexamination Certificate issued )

The examiner is invited to review these other co-pending applications as she deems appropriate.

As previously noted, the word "immediate" had been removed from Claims 123 and 132. The word "direct" has been added to both of these claims in one location. The word "direct" is to be interpreted to mean only that there is no further decision-making that takes place after receipt of the acceptance from the worker.

Most of the claims were rejected as obvious under 35 USC 103 over Clark et al. (US 5,164,897), in view of Donnelly (US 6,049,776), in view of Pinard (US 5,940,834), and further in view of McGovern (US 5,978,768). This rejection is respectfully traversed and reconsideration is requested.

Dependent claims 92, 102, 104, 107, and 113-114 were rejected as obvious under 35 USC 103 over Clark et al. (US 5,164,897), in view of Donnelly (US 6,049,776), in view of Pinard (US 5,940,834), and further in view of McGovern (US 5,978,768), and further in view of Thompson (US 6,334,133). This rejection is respectfully traversed and reconsideration is requested

A problem that applicant discovered at the time of the claimed invention was **how to use preferences** for particular workers **in an essentially broad-band system of web serving** of offers of positions **where receipt of an acceptance automatically assigns the position** without further decision-making, **and where time is of the essence** to fill the position, e.g., a teacher calls in sick at 6 pm of the day before she is to teach and the position must be filled before the start of the next school day.

Independent claim 123 electronically provides timed exclusive availability, based on a specified time period, for receiving an electronic acceptance from one of the plurality of preferred workers, where the electronic acceptance **triggers an automatic electronic assignment of the position to the accepting employee without further decision-making** by the system. This timed availability is set **in the context of serving** to the respective web pages of the preferred workers an electronic capability to make an electronic acceptance, which acceptance results in a direct assignment. After this specified period has lapsed without receiving an electronic acceptance from one of the preferred workers, the system makes the position available to a second tier of additional workers and the preferred workers. There is nothing in the prior art that suggests or points to such a system timing with respect to served individual web pages in August 2000, and the prior art of record teaches away from such a system and method.

Claim 123 includes a number of operations for setting a context for the operation of the claimed method and system, as a whole. The claimed context requires the initial operations of **“obtaining information about a new open position,”** coupled with the operation of **“obtaining information about one or more of the workers that are preferred (“a preferred worker”) for the new open position,”** coupled with the operation of **“filtering to determine, for each of a plurality of the respective workers, one or more of the open positions in the one or more databases for which the respective worker is qualified.”** Thus, workers are grouped into at

least two tiers: preferred workers, and additional qualified workers and preferred workers. The features in claim 123 that are completely missing in this prior art combination, and particularly for the claim as a whole in the claimed operation context, are:

the one or more computers configured for notifying the one or more preferred workers that the new open position is now available for acceptance **by at least serving information about the new open position to the respective one or more worker web pages associated only with the one or more respective preferred workers in response to one or more respective electronic requests by or for the one or more preferred workers;**

the one or more computers configured **for serving the one or more web pages of the one or more preferred workers with an electronic capability to make an electronic acceptance of the position** in response to the one or more respective electronic requests by or for the one or more preferred workers;

the one or more computers configured **for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in direct response to receipt of an electronic acceptance** of the new open position from one of the one or more preferred workers and removing the position as an available for acceptance open position;

*[No reference discloses this ability to only one tier of workers to accept during a specified time period, coupled with the following operations.]*

the one or more computers configured **for automatically making available for acceptance the new open position to one or more additional respective worker web pages associated only with one or more additional respective workers that are qualified,** if one of the one or more preferred workers has not accepted the new open position before **expiration of the specified time period** and for serving the one or more web pages of the one or more respective additional workers with an electronic capability to make an electronic acceptance of the position in response to one or more respective electronic requests by or for the one or more additional workers; and

*[The reference combination teaches away from this timed availability to a 2<sup>nd</sup> group of worker (which may include the 1<sup>st</sup> group) after a specified time has elapsed.]*

the one or more computers configured for **assigning** the new open position, **after the expiration of the specified time period**, to one of the workers for which the new open position is made available for acceptance in direct response to receipt of an electronic acceptance of the new open position from that worker.

*[The reference combination teaches away from this automatic assigning operation to one from this 2<sup>nd</sup> tier of workers after the specified time period has elapsed upon receipt of an electronic acceptance from a worker in this 2<sup>nd</sup> tier.]*

The Office Action states that one of ordinary skill in the art would be motivated to modify the method of Clark, in view of Donnelly and Pinard to match employees to job qualifications via an individual web page, with the web page accessed by a potential employee as taught by McGovern.

**No articulated reasoning for this combination is provided, other than that “one of ordinary skill would have recognized that the results of the combination were predictable.”** This is a conclusory statement based on a hindsight review of applicant’s claims and applicant’s specification. The test is not to start with the combination of applicant’s claim and determine whether the result of that combination, once constructed, is predictable. The test is whether one of ordinary skill in the art would have some reason from the prior art at the time of the invention, to make the specific combination claimed in the specific way claimed, as required by the holding in *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 390 (2007). Note in particular that the person of ordinary skill is **not** from 2010, but rather from **August 2000**, the filing date of the application.

The references do **not** teach serving worker web pages with an electronic capability on the respective web pages of the tier of workers to send an electronic acceptance. The references do not teach that receipt of an electronic acceptance from a worker triggers an

**automatic assignment of the position without further decision-making. The references do not teach a system that provides an exclusivity period by timing the system to automatically assign the position only on receipt of an electronic acceptance from a worker in a tier of one or more preferred workers during “a specified time period,” and then, after expiration of the specified time period, assigning the position automatically on receipt of an electronic acceptance received from a worker in a second tier of workers.**

**THE REFERENCE CLARK:** The claims have been rejected under 35 USC 103 over Clark et al. (US 5,164,897) in view of three other references. Clark is directed to matching personnel to three sets of job criteria in three different data files. A first group of employees is obtained by matching job titles and a corresponding employee code. A second group of employees is obtained based on industrial experience. A third group of employees is obtained based on special skills. Then employee records for those employees in all three groups are selected. See the Abstract and Figs. 1a and 1b and the Summary of Invention for Clark. As the examiner states, Clark discloses filtering based on criteria.

The Office Action cites column 7, lines 57-67 as disclosing exclusivity for a group of preferred workers and position assignment timing. But this citation in Clark actually teaches a system selection based on a criteria of resumes or job openings **to then list in a report**. There is no automatic assignment by the Clark system. There is no computer sorting of resumes into preferred and qualified tiers. There is no system timing with two timing periods for acceptance, implemented with an electronic capability served on the respective web pages of the workers in the different tiers to transmit an electronic acceptance served to both groups, but at different times.

Thus, the cited column 7, lines 57-67 in Clark is **a direct teach-away to the claimed computer system logic, which claimed logic serves an electronic capability on the respective web pages of the workers to transmit an electronic acceptance** in response to one or more respective electronic requests by or for these preferred workers. This citation in Clark **directly teaches away from automatic system assignment using a tiered timing, where electronic acceptances can be received, and a position automatically assigned both during a specified**

**period (to one tier set of workers) and after expiration of the specified period (if no acceptance had been received during the period) to another tier set of workers.** This was not obvious to one of ordinary skill in year 2000. If the examiner continues to argue that Clark teaches the claimed assignment system timing with multiple tiers, applicant requests a further explanation of where this two tier system timing is disclosed.

Applicant has also found no disclosure in Clark on hosting a separate web page for each of a plurality of workers, with each different respective worker web page associated with only the respective worker. Applicant has also found no disclosure in Clark of the serving of an offer of a position on a separate web page of the respective employee, that the employee can accept, without further decision-making by the company.

**THE REFERENCE DONNELLY:** The second reference cited in this 4-way combination is Donnelly. The examiner, at page 3 of the Office Action, cites Donnelly, column 13, lines 8-35, as disclosing providing an immediate response to an electronic receipt of a position selection.

Donnelly is directed to a resource management system (RMS) with a database of employee skills and their respective schedules. A calendar functionality is provided to determine employee availability to staff a particular project. The RMS system reviews the individual calendars of the employees that are determined to be qualified, and then assigns the positions to staff the project to the respective qualified employees that have open time on their respective calendars. The assignment by the project manager or his staff of employees for a project is shown in Fig. 53 and described beginning at column 28, line 46.

The Office Action refers to column 13, lines 8-35 of Donnelly. This text reference in Donnelly teaches that the company assigns the project to the respective qualified employee (lines 16-17), and then updates in real time the employee's respective workbench calendar (lines 30-31). If the project is tentative, and if it is subsequently cancelled, so that it is no longer available for assignment to anyone, then the respective calendars of the employees assigned to the cancelled project are updated to cancel this project assignment on their respective calendars, and the employees are made available for other project assignments by other managers (lines 9-13, and column 18, lines 20-29). Applicant has found no disclosure in Donnelly of a triggering event



that causes an assignment in response to receiving an electronic acceptance from a worker, which causes a direct assignment, with no further decision-making.

**Donnelly is a direct teach-away** from the claimed invention, as it teaches a company assignment of the positions without employee acceptance, and further without timed availability with respect to at least two tiers of workers (e.g., the preferred workers, and the second tier of additional qualified workers and the preferred workers), where the position is made available to a second tier of workers only after the lapse of a specified time period. **This claimed timing configuration with multiple tiers in a substantially broad band Internet system in 2000 was unique and non-obvious.**

**THE REFERENCE PINARD:** The third reference cited in this 4-way combination, is Pinard. The Office Action cites Figs. 4A, 6 and 8, and column 6, lines 14-20 of Pinard and column 4, lines 29-40 for disclosing to one of ordinary skill individual worker web pages where the web page is configured for notifying the one or more preferred workers that the new position is now available for selection. But the Office Action then concedes that this feature is not disclosed by stating that “*it would be obvious to include a web page taught by Pinard for an open position.*”

Pinard discloses a web page generator for an administrator to automatically create a web page directory, and allows an individual with network access to view the directory information in a web page format. See the Abstract.

Besides disclosing web pages directed to individuals in a directory, Pinard discloses nothing about a web page with open positions for which the person is qualified, and an electronic capability on the respective one or more web pages of the preferred workers to transmit/send an electronic acceptance of the position, or after a specified time, making the position available to another tier of workers to transmit/send an electronic acceptance of the position, much less a **system where receipt of an electronic acceptance from a worker for which the position is available automatically assigns the position to the accepting worker, directly and without further decision-making processing.** Likewise, Pinard discloses nothing about **timed availability, by computer, of open positions to at least two tiers of worker web pages (e.g.,**

**the preferred workers, and the second tier of additional workers and the preferred workers).**

**THE MCGOVERN REFERENCE:** The fourth reference in the 4-way combination is McGovern. The Office Action at pages 4-5 cites McGovern as disclosing tiered system timing, also citing Fig. 6, column 8, lines 14-26, and column 10, line 66 – column 11, line 18., column 3, lines 20-33 and column 9, lines 41-55 and column 11, lines 1-7.

What is claimed in the present application is the system notifying by serving the web pages of the one or more preferred workers and serving an electronic capability on the respective web pages of these one or more preferred workers to transmit/send an electronic acceptance for the new position in response to one or more respective electronic requests by or for these preferred workers and automatically assigning to the first preferred worker to transmit an electronic acceptance during a specified period of time, and in the context of timed availability, making the position available to another tier of workers, after the specified time period has lapsed with no preferred worker accepting the position.

McGovern teaches away from the claimed invention. McGovern does **NOT** teach serving an electronic capability on the respective web pages of these one or more preferred workers to transmit/send an electronic acceptance of the new position, or making the position available to another tier of workers, if the specified time period lapses with no preferred worker accepting the position. McGovern does **NOT** teach automatically assigning a position based on the trigger of receipt of an electronic acceptance from a worker listed in the database of the claim for which the position is available. Rather, Fig. 6 of McGovern, cited in the Office Action, is a tool bar for a company administrator, the “hiring contact,” to add new positions to the website. Column 8, lines 14-26 of McGovern explains that the company administrator can manually add open positions and can manually delete positions using the tool bar. McGovern notes that the position may only be open for a certain period of time (column 9, lines 41-55), after which the position is not available to anyone. Column 10, line 66 – column 11, line 18 of McGovern again discusses manual deletion, but adds the feature of automatic deletion, based on previously

entered position expiration dates provided by the company hiring contact, after which the position cannot be assigned to anyone.

When McGovern **deactivates** the position in column 11, lines 1-18, it deactivates the position for **all** job applicants. **McGovern teaches away** from the claim by this McGovern deactivation operation of the position. **McGovern**, with this disclosed deactivation operation for the position, **does exactly the opposite** of the claimed automatically opening the system after the specified time period has lapsed, via making the position available to a new tier of workers, and receiving an electronic acceptance from a workers in this new tier of additional workers and preferred workers, and assigning the position in response to receipt of such an electronic acceptance. McGovern suggests nothing about setting up at least two tiers of applicants (e.g., a preferred set of workers, and a second tier of additional workers and preferred workers). Rather, McGovern does the opposite, by deactivating the position for all workers.

**NO ARTICULATED REASONING FOR COMBINATION:** The Office Action states that one of ordinary skill in the art would be motivated to modify the method of Clark, in view of Donnelly and Pinard to match employees to job qualifications via an individual web page, with the web page accessed by a potential employee as taught by McGovern.

**This is a conclusionary statement based on hindsight review of applicants' claims and applicant's specification. The test is not to start with the combination of applicant's claim and determine whether the result of that combination, once constructed, is predictable. The test is whether one of ordinary skill in the art would have some reason from the prior art at the time of the invention, to make the specific combination claimed in the specific way claimed, as required by the holding in *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 390 (2007). Note in particular that the person of ordinary skill is not from 2010, but rather from August 2000, the filing date of the application.**

There is nothing in either Clark or Pinard or Donnelly or McGovern to explain or suggest or provide any form of roadmap on how or why one of ordinary skill would modify Clark (a system for selecting resumes or job openings for listing in a report), by using Donnelly (a system for automatically determining employee project availability and then selecting employees automatically for a given project), using Pinard (a directory web page generator for an

administrator) with McGovern (a job search system), to enable, in the manner claimed, a multi-tier timing system based on a set of preferred workers, and a second tier of workers, and respective worker web pages that are served, in response to one or more respective electronic requests by or for these respective workers, with an electronic capability to transmit/send an electronic acceptance of the position to trigger an assignment, with the timing of the serving of the electronic capability based on the tier of the worker, i.e., **by timing the system to serve an electronic capability on the web pages of the one or more preferred workers during a specified time period** in response to one or more respective electronic requests by or for these respective workers, **and automatically assigning the position only on receipt of an electronic acceptance from a worker in the tier of one or more preferred workers during the “specified time period,” and then, after expiration of the specified time period, making the position available to workers in the second tier, and assigning the position automatically on receipt of an electronic acceptance received from a worker in this second tier of workers.** This two-tiered timing is not disclosed or suggested by any of these references. This method and system operation was not obvious to one of ordinary skill in the art in August 2000, particularly in view of the teachings in these references that teach away from the elements for which the Office Action relies.

These references would not enable one of ordinary skill in the art to create the system and method claimed.

Accordingly, no prima facie case for obviousness of the invention “**as a whole**,” under 35 USC 103 has been made. There are multiple teach-aways in each of these 4 references. No “**articulated reasoning with some rational underpinning**” to support an obviousness rejection of the invention claims, as a whole, is set forth, per the requirement of *KSR Int’l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007). The presence of these teach-aways indicates that no such rationale existed in year 2000, the year of filing.

**FURTHER EVIDENCE OF NON-OBVIOUSNESS—DECLARATION OF SKILLED PERSON IN THE ART:**

**Declaration of Edmond John Dougherty:** Additional evidence is the Declaration of Mr. Edmond John Dougherty, submitted with this Response. Mr. Dougherty has over 30 years of design and development experience with complex electronic and software systems, with substantial Web experience. He is President of Abaze Development Corporation and a founder of Wavecam Media, Inc. Ablaze Development ([www.ablazeddevelopment.com](http://www.ablazeddevelopment.com)) provides product design services. Wavecam Media ([www.wavecam.com](http://www.wavecam.com)), a spin-off of Ablaze Development, produces and operates a aerial remote camera systems for sports and entertainment. Mr. Dougherty was also a founder of August Design, LLC., a company established in 1984 and recently sold to Transcore.

Mr. Dougherty is a Visiting Assistant Professor at Villanova University with joint appointments in the Electrical, Computer and Mechanical Engineering Departments. He specializes in software development, Web interfacing, project management, artificial intelligence, creativity and electronics design.

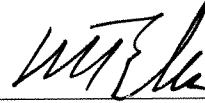
Accordingly, claim 123 and claims dependent thereon are allowable for these reasons, and also in their own right based on the additional limitations that they add. Method claim 132 and claims dependent thereon are allowable for the similar reasons. Argument on each of the dependent claims is held in abeyance.

Accordingly, it is requested that this rejection of the claims be reconsidered and withdrawn in view of the above, including the new evidence of non-obviousness comprising the Declaration of Edmond John Dougherty, and the case passed to issue.

Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is

hereby authorized to charge Deposit Account No. 19-0741 for any such fees; and applicant(s)  
hereby petition for any needed extension of time.

Respectfully submitted,



---

William T. Ellis  
Attorney for Applicant  
Registration No. 26,874

Date May 21, 2010

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 672-5485  
Facsimile: (202) 672-5399